

Falls Church, Virginia 22041

File: A90 195 715 - Eloy

Date:

FEB 23 2000

In re: SAUL CUEVAS-GARCIA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Paul N. Medved, Esquire

ON BEHALF OF SERVICE: John W. Davis
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Termination of proceedings

The respondent has appealed from an August 30, 1999, decision of an Immigration Judge finding him removable from the United States due to his conviction for an aggravated felony under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii). The appeal will be dismissed. The request for oral argument is denied. 8 C.F.R. § 3.1(e).

The respondent was convicted in the United States District Court, Eastern District of California, on February 20, 1998, of eight counts of mail fraud in violation of 21 U.S.C. § 1341 and two related counts in violation of 18 U.S.C. § 513; 2(a) (Tr. at 8-12; Exhs. 1, 3, 7). All counts were part of the same scheme to defraud the victim CareAmerica (Indictment, B.6-7). The respondent was sentenced to 15 months imprisonment on each of the counts to be served concurrently and was ordered to pay restitution to the victim in the amount of \$52,638.09. The question on appeal is whether the respondent has been convicted of an aggravated felony under section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i), which includes within the definition of an aggravated felony:

an offense that -

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000¹

¹ Statutory changes made to section 101(a)(43)(M) of the Act in 1996 reduced the amount of monetary loss to the victim or victims required to trigger a finding that a conviction was for an aggravated felony, in cases involving fraud or deceit, from \$200,000 to \$10,000. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208 § 321(a)(7), 110 Stat. 3009-546, 3009-628 (enacted Sept. 30, 1996).

The respondent appeals from the finding of removal arguing that, while he may have been convicted of several separate offenses, the record of conviction indicates that no single count, which he argues is synonymous with "offense", involved loss to the victim exceeding \$10,000.² While the respondent urges that a finding that he has committed an aggravated felony is erroneously predicated on considering all of the counts as one offense, we do not agree that the issue must be framed in this manner. For a fraud offense to be considered an aggravated felony under section 101(a)(43)(M)(i) of the Act, it must: 1) involve fraud or deceit; and 2) involve a loss to the victim or victims of over \$10,000. There is no question that each of the relevant separate counts of the indictment involve fraud; and the judgment, which orders the respondent to pay over \$52,000 restitution to CareAmerica, establishes that this fraud, which was part of a "Scheme to Defraud CareAmerica" (Indictment, B.6-7), involved loss to the victim of over \$10,000.

As noted by the respondent, the Immigration Judge relied on Soueiti v. INS, 1999 WL 543754 (9th Cir. 1999), in his decision. This opinion was withdrawn and the respondent's petition in that case, making similar arguments to those presented here, was dismissed on August 30, 1999, the same date the Immigration Judge's decision before us was rendered. Although this circuit court decision is no longer binding precedent, we agree with the prior Board analysis that was discussed therein and we find that the record establishes that the respondent is removable under section 237(a)(2)(A)(iii) of the Act. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.



FOR THE BOARD

² We note that 18 U.S.C. § 1341 does not require proof of any specific "loss" to the victim. Each count in question simply identified the date, the item mailed, and the amount of the check in question that was part of the scheme to defraud CareAmerica, which was described elsewhere in the indictment.